

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EAST END ERUV  
ASSOCIATION, INC., et al.,  
:  
CV-11-213  
(LDW)  
Plaintiffs,  
:  
United States Courthouse  
Central Islip, New York  
-against-  
THE VILLAGE OF WESTHAMPTON  
BEACH, et al.,  
:  
December 9, 2011  
10:15 a.m.  
Defendants.  
-----X

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE LEONARD D. WEXLER  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: ROBERT G. SUGARMAN, ESQ.  
JESSIE MISHKIN, ESQ.  
Weil Gotshal & Manges, LLP

For the Defendants: MAUREEN LICCIONE, ESQ.  
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For Southampton Town

BRIAN S. SOKOLOFF, ESQ.  
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For Westhampton

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For Village of Quogue

APPEARANCES CONT'D:

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For Village of Quogue

ALSO PRESENT: MICHELE A. PINCUS, ESQ.  
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For LIPA

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For Verizon

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Proceedings recorded by mechanical stenography.  
Transcript produced by CAT.

1 THE CLERK: East End Eruv Association v the  
2 Village of Westhampton Beach, et al.

3 Your appearances, please.

4 MR. SUGARMAN: Good morning, your Honor.

5 Robert Sugarman and Jessie Mishkin for the  
6 plaintiffs.

7 MR. SOKOLOFF: Brian Sokoloff for the Village of  
8 Westhampton Beach defendants.

9 MS. HAMILTON: Marci Hamilton for the Village of  
10 Quogue, your Honor.

11 MS. DEJONG: Jeltje DeJong for the Village of  
12 Quogue.

13 MR. SIMRY: Your Honor, I am Jonathan Simry.

14 We are here on behalf of the motion of the  
15 Jewish people for the betterment of Westhampton Beach.

16 MS. LICCIONE: Maureen Liccione for Southampton  
17 Town defendants.

18 MS. PINCUS: Michele Pincus here on behalf of  
19 LIPA.

20 MS. WEISGERBER: Erica Weisgerber on behalf of  
21 Verizon.

22 THE COURT: Go ahead.

23 MR. SUGARMAN: Your Honor, Robert Sugarman on  
24 behalf of the plaintiffs.

25 After your Honor's decision on the preliminary

1 injunction motion, plaintiffs followed your suggestions.  
2 We were going to file the appropriate applications with  
3 the town of Southampton.

4 THE COURT: You haven't done it yet?

5 MR. SUGARMAN: We have not done it yet.

6 We are in the process.

7 THE COURT: What are you waiting for?

8 MR. SUGARMAN: We are in the process of  
9 retaining counsel.

10 THE COURT: You are in the process of what?

11 MR. SUGARMAN: Retaining counsel who will make  
12 that application.

13 It should be made right after the first of the  
14 year. With respect to Quogue and Westhampton Beach, we  
15 followed your suggestion. We have submitted a revised  
16 Eruv plan, the list of poles and maps have been  
17 circulated.

18 I have additional copies for the court. What  
19 your Honor has there is the revised map which shows the  
20 boundaries and a list of the poles. None of the poles are  
21 in the Town of Southampton. They are all either in  
22 Westhampton Beach or Quogue.

23 The lechis in Quogue are the same as they were  
24 when we moved in the preliminary injunction. The lechis  
25 in Westhampton Beach have been moved so that the western

1 boundary of the Eruv is no longer in the Town of  
2 Southampton, but is in Westhampton Beach.

3 So what the two municipalities did in response  
4 to this new revised Eruv plan is they submitted to your  
5 Honor letters requesting permission to make a motion to  
6 dismiss. This is déjà vu all over again, your Honor.  
7 When we filed the motion for preliminary injunction in the  
8 spring, that was met with letters from the three  
9 municipality to make a motion.

10 Your Honor set the preliminary injunction  
11 schedule, the briefing schedule. We had the hearing on  
12 the preliminary injunction. Your Honor issued the court's  
13 decision.

14 The letters that have now been filed are  
15 virtually the same as the letters that were filed six  
16 months ago. They raise the same arguments. The arguments  
17 that are raised in the letters are --

18 THE COURT: We'll let them make their own  
19 arguments.

20 MR. SUGARMAN: -- that were made before.

21 So, your Honor, at this point, we respectfully  
22 request that based on your Honor's decision that  
23 Westhampton Beach has no grounds to oppose the placement  
24 of lechis on their poles and we renew our request to issue  
25 a preliminary injunction with respect to those

1 municipalities.

2 Absent that, Verizon and Long Island Power,  
3 whose counsel are here, will not go forward with the  
4 contracts. That's what we need and that's what we  
5 respectfully ask the court to do.

6 Thank you.

7 THE COURT: What application are you going to  
8 make to Westhampton Beach?

9 They have no rules and regulations concerning  
10 it.

11 MR. SUGARMAN: Your Honor, we can make an  
12 application to --

13 THE COURT: You told me you are hiring  
14 counsel --

15 MR. SUGARMAN: No. No.

16 This is the Town of Southampton.

17 THE COURT: Oh, okay.

18 MR. SUGARMAN: They are not here today.

19 You denied that motion because it wasn't ripe.  
20 That's what I was talking about.

21 THE COURT: Okay.

22 Let's hear from the defendants.

23 MR. SUGARMAN: Not Westhampton Beach.

24 MR. SOKOLOFF: Judge, we have asked permission  
25 to file a motion to dismiss based upon the lack of

1 ripeness, the lack of standing --

2 THE COURT: Wait a minute. Ripeness?

3 What do you mean by that, that they haven't done  
4 anything?

5 MR. SOKOLOFF: My clients have not done  
6 anything.

7 THE COURT: Do you have any rules and  
8 regulations defining signing and where you go in order to  
9 get permission?

10 MR. SOKOLOFF: We indicated in the hearing  
11 that --

12 THE COURT: Don't tell me what you indicated in  
13 the hearing. I asked you a question.

14 Can you answer the question?

15 MR. SOKOLOFF: The lechis as proposed are not  
16 viewed by the Village of Westhampton Beach as a sign.

17 THE COURT: Do you have any sign ordinance?

18 MR. SOKOLOFF: I believe there is a sign  
19 ordinance, but it doesn't cover the lechis.

20 THE COURT: Read to me the sign ordinance you  
21 have.

22 MR. SOKOLOFF: I didn't bring it.

23 THE COURT: You didn't bring it. The last time  
24 you didn't know about it either and you didn't bring it.

25 Doesn't anybody in this whole case you are

1 fighting in saying it doesn't apply say that you have  
2 something? What do you have?

3 You also mentioned to me that it was never  
4 discussed by the village. Is that correct?

5 MR. SOKOLOFF: Correct.

6 THE COURT: And I put in my decision how could  
7 it be possible that they have hired outside counsel and  
8 paid money to fight it when it was never discussed?

9 I'm curious, to this day you mean they still  
10 haven't discussed the issue that's involved here?

11 MR. SOKOLOFF: Judge, I was not aware that a  
12 village hiring an attorney to get legal advice could  
13 somehow lead to liability under the First Amendment.

14 THE COURT: Did the village ever discuss  
15 anything about this case?

16 MR. SOKOLOFF: Not officially.

17 THE COURT: Unofficially, then.

18 MR. SOKOLOFF: Judge, I don't know.

19 THE COURT: And they spent money unofficially  
20 too?

21 MR. SOKOLOFF: They haven't spent money to hire  
22 me.

23 This is triggered when there is a lawsuit, being  
24 done by the village's --

25 THE COURT: All right.



1                   You want to make a motion. Is that correct?

2                   MR. SOKOLOFF: Yes, I do.

3                   THE COURT: When do you want to make it by?

4                   MR. SOKOLOFF: Three weeks.

5                   THE COURT: What would be your position if the  
6                   plaintiffs went forward with their plan?

7                   MR. SOKOLOFF: I can't answer that.

8                   THE COURT: You can't answer -- you are the  
9                   attorney and you can't answer that.

10                  MR. SOKOLOFF: I can't answer it and I'm not  
11                  obligated to answer it.

12                  THE COURT: Okay.

13                  You are not obligated to answer it. I'll direct  
14                  them that they go forward until they hear otherwise from  
15                  the village.

16                  MR. SOKOLOFF: Okay.

17                  But I'm told --

18                  THE COURT: Okay. Fair enough.

19                  You make your motion in three weeks. They have  
20                  three weeks to respond. You have five days --

21                  MR. SOKOLOFF: Can I correct myself?

22                  I'm told that three weeks is Christmas. Can we  
23                  have until January 1st or whatever day it is?

24                  THE COURT: When do you want it?

25                  MR. SOKOLOFF: The first business day of 2012,

1 which I'm looking up, January 2nd.

2 THE COURT: It's January 3rd, I believe.

3 MR. SOKOLOFF: January 3rd.

4 THE COURT: Okay, January 3rd.

5 In the meantime, they can file and we'll see  
6 what you do and we'll see what the board has to say about  
7 it -- they don't have to file, just do what you have to  
8 do.

9 MR. SUGARMAN: Your Honor, in other words, we  
10 can go forward with the Eruv in Westhampton Beach.

11 THE COURT: Subject to what they are going to  
12 do, since they say they don't know, they haven't discussed  
13 it.

14 So, fine, and they want to make a motion to  
15 dismiss. Okay. I'm granting it.

16 Let's go to Quogue.

17 MS. DEJONG: Your Honor, Quogue also would like  
18 to make a motion to dismiss.

19 THE COURT: What do you say concerning your  
20 ordinance?

21 You have an ordinance.

22 MS. DEJONG: We have an ordinance, your Honor,  
23 that say the lechis apply.

24 THE COURT: In your ordinance it says if it  
25 interferes with a projection or encroachment and you are

1 claiming that the stick on the pole interferes with the  
2 egress and interferes with people walking on the streets  
3 and cars.

4 Okay. I understand that.

5 MS. DEJONG: Your Honor, basically what we are  
6 saying, really, I think the first step is that the  
7 plaintiffs need to apply, that's all.

8 That's what we are saying at this point. I  
9 can't tell you what the village is going to say.

10 THE COURT: I'm going to make the same ruling to  
11 them so you will find out what the village will say.

12 MS. DEJONG: They haven't applied.

13 THE COURT: When are you going to apply?  
14 When are you going to do it?

15 MR. SUGARMAN: Your Honor, the problem is,  
16 unlike Southampton, which had a procedure, there is no  
17 procedure in Quogue for us to apply.

18 Counsel says --

19 THE COURT: She says there is.

20 MR. SUGARMAN: Your Honor, there is one other  
21 point.

22 THE COURT: It would be so much easier if you  
23 applied, they would say yes or no.

24 MR. SUGARMAN: Your Honor, there are two  
25 problems.

1           One is there is no procedure as there is in  
2     Southampton. The second is you said it in your decision  
3     and you have repeated it this morning that their argument  
4     that it's an encroachment or a projection is what you said  
5     questionable.

6           THE COURT: Good.

7           It's going to be delayed. File, will you,  
8     please?

9           MR. SUGARMAN: Your Honor, what I would ask the  
10    court to do, because this is just further delay, is allow  
11    us to put the Eruv up in Quogue and we will then submit an  
12    application, although we don't know how.

13           But in the interim, at least, Mr. Lean, for  
14    example, who lives in Quogue --

15           THE COURT: Will you do it my way? File it.

16           You don't know how, very simple. Fill out the  
17    form and give it to them and see what they do with it.  
18    I'm allowing you to go ahead subject to what they do with  
19    it and see what the rights are.

20           MR. SUGARMAN: Allowing us to go ahead and put  
21    up the Eruv in Quogue as in Westhampton and apply.

22           THE COURT: No. Apply first then do it  
23    immediately.

24           MR. SUGARMAN: Apply first, put up the Eruv  
25    immediately, and wait to see what they do.

1 THE COURT: There's three separate ordinances  
2 involved.

3 MR. SUGARMAN: Correct.

4 THE COURT: The one has nothing.

5 There you can go ahead immediately. They have  
6 something. Will you please apply there first. Do it in  
7 Westhampton Beach. If they delay it, let me know, and we  
8 will then change our position.

9 You understand that?

10 MR. SUGARMAN: Put it up in Westhampton Beach,  
11 make an application to Quogue.

12 THE COURT: Yes.

13 MR. SUGARMAN: And keep you posted if there is a  
14 delay.

15 THE COURT: Right.

16 MR. SUGARMAN: But not put it up in Quogue for  
17 the moment.

18 THE COURT: Yes. Okay.

19 Satisfied?

20 MS. DEJONG: Yes, your Honor, and --

21 THE COURT: It's amazing how the boards haven't  
22 discussed this issue and we don't know where they stand  
23 until an application is made. Even though they have hired  
24 lawyers to fight it, they have never discussed it.

25 Okay. That's very interesting.

1 MS. DEJONG: Your Honor, the village would also  
2 like to submit a motion to dismiss the same day.

3 THE COURT: Same terms and conditions.

4 MR. SUGARMAN: Your Honor, may I say one other  
5 thing?

6 If we are limited to Westhampton Beach, we will  
7 have to submit yet another revised Eruv plan because we  
8 will have to move the lechis out of Quogue into  
9 Westhampton Beach.

10 In light of your Honor's finding --

11 THE COURT: I'm not ruling that you are right.

12 I'm just saying do it so we can get a reaction  
13 so they don't say it's not ripe.

14 MR. SUGARMAN: I understand that.

15 All I'm saying is, in light of your Honor's  
16 decision that Quogue's argument is questionable as opposed  
17 to arguable, which you said with respect to Southampton, I  
18 respectfully request in order to avoid the necessity to do  
19 yet another revised Eruv plan that for the -- temporarily  
20 that you allow the present Eruv plan to go forward.

21 Obviously --

22 THE COURT: All right.

23 I can see that. Yes. I will allow it.

24 MR. SUGARMAN: We will put the proposed --

25 THE COURT: I know he's going to oppose it.

1 MS. DEJONG: Your Honor, he's talking about the  
2 Village of Quogue at this point without having made an  
3 application.

4 He's asking that this court allow them to put up  
5 an Eruv without ever having had any application or any  
6 conversation with anybody from the Village of Quogue.

7 MR. SUGARMAN: Temporarily, your Honor.

8 THE COURT: Temporarily, yes.

9 I'm allowing it.

10 MR. SUGARMAN: Yes.

11 THE COURT: Not that it's permanent and I want  
12 to hear your objections and so forth before I make a  
13 permanent ruling on it.

14 MS. DEJONG: Your Honor, would we have that  
15 ruling in writing, please.

16 Can we have a ruling in writing so we can do  
17 what we have to do?

18 THE COURT: You can order the record and I will  
19 so order it.

20 MR. SUGARMAN: Thank you.

21 THE COURT: Next.

22 MR. SOKOLOFF: I just want to understand.

23 I think the record needs to be clarified. This  
24 court is directing the plaintiff to put up an Eruv in  
25 Westhampton Beach, that's an order of the court?

1 THE COURT: No.

2 I'm suggesting he do it because you haven't made  
3 a decision and this will force a decision one way or the  
4 other, then we will evaluate whether it's right or wrong.

5 MR. SOKOLOFF: As long as it's a suggestion and  
6 it's not a preliminary injunction.

7 I don't want the plaintiff to run around with  
8 that order saying the judge said we have a right to put it  
9 up.

10 THE COURT: That's right.

11 I'm saying they should. I'm recommending it.  
12 So you can get a decision because you can't get it from  
13 your board whether they are going to oppose it or not and  
14 you haven't even spoken to them about it and they haven't  
15 spoken about it and it's been going on for a long time and  
16 this will force the issue.

17 Then we will be able to decide. Do you have any  
18 objection to that, counsel?

19 MR. SOKOLOFF: My only objection was to a court  
20 order directing them to put it up and to any kind of  
21 finding --

22 THE COURT: Did I resolve that for you?

23 MR. SOKOLOFF: Yes.

24 Thank you.

25 THE COURT: Okay.



1               Next.

2               MS. DEJONG: Your Honor, with regard to the  
3 Village of Quogue, I would just like to add that your  
4 Honor, by allowing the plaintiff to set up or construct an  
5 Eruv temporarily, you are, in effect, placing Quogue in a  
6 more negative position in that they haven't even ever  
7 dealt with this.

8               Now, if they decide --

9               THE COURT: I won't put Quogue in that negative  
10 position.

11              I promise you that. We will judge the merits  
12 based upon what the law is and what the facts are. They  
13 are not in a negative position.

14              Next.

15              MR. SUGARMAN: Your Honor, I was just told by  
16 counsel for LIPA and Verizon that they need some decision  
17 from the court that we are allowed to put it up, pending  
18 all of this other stuff.

19              Because, absent that, they still feel  
20 constrained that they can't go forward.

21              THE COURT: Let me hear from them.

22              MS. PINCUS: Your Honor, although we are not  
23 parties in this action, both LIPA and Verizon have a  
24 related action in which we sought declaratory relief  
25 because of the dispute that's before the court, we were

1 put into a position --

2 THE COURT: What position are you in that you  
3 need guidance?

4 What has done anything to you?

5 MS. PINCUS: The position we are in is that we  
6 were advised by the three municipalities if we went ahead  
7 and allowed the Eruv to attach to our poles or to use our  
8 poles in connection with the attachment of the lechis that  
9 the municipalities were going to fine --

10 THE COURT: Wait a second.

11 The counsel sitting there raised their head and  
12 said, no. That never happened.

13 Let me ask them. Will you hold them liable if  
14 they go ahead?

15 MS. PINCUS: And at this point based on what the  
16 judge is saying --

17 MR. SOKOLOFF: I'm not answering -- I can't  
18 answer that question now.

19 Judge, what I want to tell you is --

20 THE COURT: Wait a minute.

21 That's the issue I'm asking you now. What's  
22 your answer?

23 MR. SOKOLOFF: I cannot answer that question at  
24 this time.

25 What I can tell you is that there is absolutely

1 no basis at all, we had a hearing and we had evidence,  
2 there is no basis for counsel to stand up and say that  
3 anybody on behalf of my client said that they would fine  
4 Verizon or LIPA.

5 I ask them to produce the correspondence. It  
6 doesn't exist.

7 THE COURT: Thank you.

8 MS. DEJONG: Well, your Honor, it's our position  
9 that this court at this point doesn't have subject matter  
10 jurisdiction because it's not ripe.

11 It's unbelievable to me that we are going  
12 forward and that you are going to allow the plaintiff to  
13 construct an Eruv when they haven't ever had any  
14 application before the Village of Quogue, whatsoever.

15 THE COURT: They are going to have one.

16 They are not doing it in Quogue -- they are  
17 going to make an application.

18 MS. DEJONG: After they put up an Eruv, then  
19 they are going to put in an application.

20 THE COURT: I'll ask the plaintiff, what was  
21 your interpretation of what I said?

22 MR. SUGARMAN: My interpretation was on a  
23 temporary basis, the Eruv Association can put up the Eruv  
24 under the plan that we have suggested, and that it will  
25 cover Westhampton Beach and Quogue, subject to the

1 application.

2 THE COURT: No. That was not my intention.

3 My intention was you can use the form that you  
4 didn't want to make another one when you go to  
5 Westhampton.

6 But you can't do it in Quogue until you make  
7 your application and we know where they stand. You may  
8 use the same form so you objected to, you have to make  
9 another form now and so forth. So I went along with you  
10 on that.

11 That was my understanding.

12 MR. SUGARMAN: No.

13 THE COURT: That solves their problem that it's  
14 not up, but you can make your application to both, and use  
15 the same form.

16 MR. SUGARMAN: Well, your Honor, we can -- what  
17 I was saying is that in order to do an Eruv just in  
18 Westhampton Beach, we have to do another -- a border  
19 because the border from Quogue --

20 THE COURT: If you win in Westhampton, then you  
21 will do it.

22 Now you don't want to waste the time and the  
23 money, I'm willing to go along and say use the same form.  
24 If you win in both, you win. If you win in one, you win.

25 If you don't win in any, you don't win, and that

1 way you will make your form and something has to start  
2 moving.

3 MR. SUGARMAN: What I understood you to say --

4 THE COURT: That's what I'm ruling now.

5 MR. SUGARMAN: You are ruling now we can go  
6 ahead in Westhampton Beach and that we cannot --

7 THE COURT: I'm not giving you an injunction.  
8 I'm not giving you an order.

9 You may proceed in Westhampton.

10 MR. SUGARMAN: Okay.

11 THE COURT: And use the same form that you have  
12 now that covers Quogue, though you can't proceed in Quogue  
13 until you make your application and they make a  
14 determination.

15 Does any counsel for the defendants know whether  
16 their clients have directed them not to allow the  
17 utilities to permit it?

18 MS. DEJONG: Your Honor, I can speak for Quogue.

19 I can tell you that the village may or did write  
20 a letter early on when they were told that they might be  
21 coming to Quogue and advised them of the ordinance and the  
22 fact that the ordinance had penalties.

23 THE COURT: That's all.

24 MS. DEJONG: It wasn't a direction, your Honor.

25 It was advising.

1 THE COURT: You have not been directed either  
2 way.

3 You can do it.

4 MS. PINCUS: The problem is that both LIPA and  
5 Verizon did not want to be in the position to interpret  
6 the statutes and that's why we were waiting to let the  
7 court do that.

8 If the court is now directing that it is  
9 permissible for the plaintiff to proceed in  
10 Westhampton Beach, we would be comfortable upon, you know,  
11 talking to general counsel and our clients and so forth to  
12 allow it.

13 THE COURT: I'm directing they may proceed and  
14 we'll see what happens.

15 MR. SUGARMAN: In Westhampton Beach.

16 THE COURT: And if I rule against them  
17 eventually you will be out of it.

18 And if I rule in their favor, you have already  
19 allowed it. It all depends upon plaintiff to move,  
20 subject to we have one more person I want to hear from.

21 MR. SUGARMAN: Your Honor, the problem I have  
22 right now is that I have just heard some equivocation from  
23 Verizon and LIPA.

24 In their view, the municipalities whether they  
25 agree with it or not, in their view they have been

1 threatened with fines and they have said to us we are not  
2 going to move forward.

3 What they need and what I would ask --

4 THE COURT: Counsel, if you don't want to move  
5 forward, don't.

6 MR. SUGARMAN: We do want to move forward.

7 THE COURT: Then do it, please.

8 Do what you want. I'm trying to make it easier  
9 for everybody so everybody will make a decision which way,  
10 nobody wants to make a decision. So, therefore, I'm not  
11 telling you what to do.

12 MR. SUGARMAN: Let me put it another way.

13 We will move forward in Westhampton Beach, not  
14 in Quogue because that's what you have said.

15 THE COURT: Yes.

16 MR. SUGARMAN: And the problem we have is that  
17 when we go to Verizon and LIPA for the poles in  
18 Westhampton Beach, they may say --

19 THE COURT: Don't worry about what they may.

20 Do it and see. You haven't done it yet. Time  
21 is running.

22 MR. SUGARMAN: We have submitted the plan.

23 They are prepared to go forward with it, as long  
24 as you say that they --

25 THE COURT: Westhampton hadn't permitted it and

1       you are going to go ahead.

2               MR. SUGARMAN: Well, we might not be able to go  
3 ahead if Verizon and LIPA are not comfortable that they  
4 are not going to be fined.

5               THE COURT: Counsel, if you want to wait until  
6 doomsday, fine with me.

7               MR. SUGARMAN: We want to do it tomorrow.

8               THE COURT: I want to hear from the other  
9 interveners and hear what they have to say before I rule  
10 on whether I'm allowing them in or not.

11              MR. SIMRY: Jonathan Simry, for the movant  
12 intervener the Jewish people for the betterment --

13              THE COURT: Who are they?

14              MR. SIMRY: My name, your Honor, is Jonathan  
15 Simry.

16              I am here for the intervener Jewish people for  
17 the betterment of Westhampton Beach.

18              THE COURT: Who are they?

19              MR. SIMRY: Your Honor, they are citizens of the  
20 Village of Westhampton Beach and predominantly Jewish  
21 citizens of Westhampton Beach who oppose the Eruv.

22              THE COURT: How many people are part of this  
23 organization?

24              MR. SIMRY: Your Honor, it's changing every day.

25              I can get that information for the court, but a



1 substantial number. I believe it's in our original  
2 papers, but I will get you the exact number.

3 THE COURT: Your original papers?

4 MR. SIMRY: It's --

5 THE COURT: Wait. Wait. Wait.

6 I love the way they say things and run on to the  
7 next thing. The original papers, I believe, were in 2008.

8 MR. SIMRY: I meant the intervention papers  
9 here, your Honor.

10 THE COURT: We have them?

11 MR. SIMRY: If not, I will get the court the  
12 exact count.

13 THE COURT: Get your papers and show me where it  
14 is.

15 MR. SIMRY: Your Honor, I believe it's over 200  
16 members.

17 I will get the court the exact count by the end  
18 of the day.

19 THE COURT: Where in your papers does it say the  
20 names of the people?

21 MR. SIMRY: I don't believe the individual names  
22 are stated, your Honor.

23 THE COURT: So we don't know who.

24 You just tell me it's over 200.

25 MR. SIMRY: I'm informed it's over 200 members.

1 THE COURT: Who is informing you?

2 MR. SIMRY: My associate.

3 THE COURT: It's double talk.

4 Nobody wants to commit. It's always somebody  
5 else who is doing it.

6 MR. SIMRY: No, your Honor, it's --

7 THE COURT: All right, the gentleman you are  
8 looking to -- is Mr. Schaeffer here?

9 MR. SIMRY: No, your Honor.

10 He is not personally here.

11 THE COURT: Who's the gentleman you are  
12 referring to?

13 MR. SIMRY: My associate, Mr. Hill, your Honor.

14 THE COURT: Does he know the names of them?

15 MR. SIMRY: We do not have the names with us,  
16 your Honor. No.

17 We do not know the individual names. What we  
18 have said is that there are over 200 members.

19 THE COURT: Okay.

20 You will get us a list, then.

21 MR. SIMRY: Excuse me, Judge?

22 THE COURT: You will get us a list.

23 It doesn't have to be 200.

24 MR. SIMRY: I will get you a list.

25 THE COURT: Go ahead.

1 MR. SIMRY: We are seeking to intervene for two  
2 reasons, one is substantive, one is procedural.

3 The procedural reason is very well illustrated  
4 here. We believe, respectfully, that the decision of the  
5 plaintiffs to come to this court, rather than making any  
6 kind of application to the municipalities, is precisely an  
7 effort to cut out the people on the ground, the citizens  
8 of these municipalities from --

9 THE COURT: They are making an application.  
10 So that cuts it -- not Westhampton Beach, but go  
11 ahead.

12 MR. SIMRY: We believe there has to be an  
13 application in Westhampton Beach also, your Honor, because  
14 regardless of whether the village has enacted a sign  
15 ordinance, the state village law, itself, gives the  
16 trustees of the village exclusive control over the use of  
17 the public ways within the village.

18 That is state law. We don't need the sign  
19 ordinance for the trustees to have that exclusive  
20 jurisdiction, and it's our view without the approval of  
21 the board of trustees, with or without a signed ordinance,  
22 you cannot come into the village and begin affixing things  
23 to -- that are within the public roads and highways of the  
24 village. We believe that's state law and we would like to  
25 make that application if we are allowed to intervene.

1           Secondly, your Honor, as I was saying earlier,  
2     we want to sit at the table. We believe that this federal  
3     action is an attempt at an end run around the process in  
4     which citizens of these municipalities, including mine,  
5     would have an opportunity to state --

6           THE COURT: Don't you think the village  
7     attorneys are doing a good job?

8           They have been fighting this tooth and nail.

9           MR. SIMRY: Your Honor, we believe that their  
10    interests are narrower than ours.

11          They are fighting and I do think they are doing  
12    a good job and I believe that their motions that they have  
13    suggested they are going to make are very meritorious.

14          But they are fighting it on purely procedural  
15    grounds of ripeness and standing. They are not taking a  
16    substantive position on the Eruv itself and they probably  
17    can't.

18          THE COURT: What's your substantive position?

19          MR. SIMRY: We are going to take a substantive  
20    position.

21          We oppose the Eruv substantively, not just  
22    procedural because we think it's bad for the village. We  
23    think it's aesthetically bad.

24          We think it will be viewed as an establishment  
25    of a religion and about a particular group within a broad

1 religious category. We would fight it in a way they  
2 can't, they don't and they can't.

3 We want to fight it substantively, as well as  
4 procedural and have a seat at the table for that purpose.

5 THE COURT: You mean the stick on the pole  
6 aesthetically is going to hurt the village?

7 MR. SIMRY: Yes, Judge.

8 That is our client's view.

9 THE COURT: Even if it's the same color as the  
10 pole, whatever it is?

11 MR. SIMRY: Your Honor, that is our client's  
12 position, both aesthetically and also, as I said very  
13 candidly, we believe that it would be viewed as a form of  
14 establishment, of endorsement of not just a religion, but  
15 a particular group within that religion which my clients  
16 who are predominantly Jews oppose.

17 And we believe that that point of view can't be  
18 represented by a municipality.

19 THE COURT: You are telling me if Hasidic Jews  
20 were coming in?

21 MR. SIMRY: Your Honor, yes, we believe that's  
22 not appropriate.

23 THE COURT: How about if it was Islamic people  
24 who wanted to come and do that, would you oppose that too?

25 MR. SIMRY: Your Honor, that's not before us.

1 I think any citizen group in these villages has  
2 standing to oppose what's being tried here which is to  
3 exclude them entirely from the process. This court this  
4 morning has invited the plaintiff to go ahead in different  
5 ways to begin this without the people of the villages even  
6 getting a say.

7 We believe that's wrong. We believe we have a  
8 right to be heard on these issues.

9 THE COURT: In other words, the public can  
10 interject on every issue involving a municipality?

11 MR. SIMRY: We believe that when an attempt is  
12 made to do an end run against the laws that are in effect  
13 in which the citizens would be permitted to participate is  
14 done, yes. Then we ought to be able to intervene.

15 Thank you, your Honor.

16 THE COURT: What do you wish to say?

17 MR. SUGARMAN: Judge a couple things, your  
18 Honor.

19 The legal arguments that the interveners want to  
20 make are the same legal arguments that the Village of  
21 Westhampton Beach has made. They made a motion earlier to  
22 intervene. You denied that motion without prejudice to  
23 renew.

24 There is nothing new --

25 THE COURT: By the way, we have a problem in

1 that I said you can renew the motion, but you didn't do  
2 that.

3 You then filed an appeal. An appeal is now  
4 pending on that.

5 MR. SIMRY: Your Honor, we circulated --

6 THE COURT: You have an appeal in the Second  
7 Circuit, I can't even rule.

8 MR. SIMRY: Your Honor, all counsel including  
9 plaintiffs have kindly stipulated this morning to our  
10 withdrawal of the appeal.

11 We will be filing that with the Second Circuit  
12 today.

13 THE COURT: Okay.

14 MR. SUGARMAN: Your Honor, when counsel says --  
15 you denied their first motion.

16 They are making the same arguments now. They  
17 are saying we are trying to do an end run around the  
18 Village of Westhampton Beach laws? You have already  
19 established pretty clearly they don't have any laws that  
20 will block the Eruv.

21 What is absolutely clear and your Honor put your  
22 finger on it, this group just doesn't want more orthodox  
23 Jews in Westhampton Beach. It's as simple as that.

24 It's not grounds, I submit to you, that you  
25 should grant a motion to intervene. They are making no

1 legal arguments different than the Village of Westhampton  
2 Beach made and it would be no basis.

3 THE COURT: When I asked him if it was an  
4 Islamic group he said well, that's not the issue.

5 I guess if I asked other minorities he would say  
6 it's not the issue. I guess it gives him the right to  
7 come in when it's a minority involved.

8 Is that correct, counsel?

9 MR. SIMRY: Respectfully, your Honor, that's not  
10 correct.

11 What I said was, we believe we have the right to  
12 intervene for two reasons, one is substantive and one is  
13 effectively procedural.

14 On the procedural we believe, as I clearly  
15 stated, that any group --

16 THE COURT: I think even your papers you said  
17 that about the particular sect of the Jewish religion.

18 MR. SIMRY: We represent Jews who oppose the  
19 Eruv and oppose what will be perceived as a municipal  
20 endorsement of Judaism and, in particular, Orthodox Jew.

21 We believe that would be viewed that way and  
22 substantively we oppose it and that's why respectfully  
23 counsel for the plaintiff is wrong that we do not make  
24 arguments that are not made and, frankly, can't be made by  
25 the municipality.



1 THE COURT: Reserved decision on that.

2 MR. SIMRY: We believe, Judge, as I said,  
3 citizens of these --

4 THE COURT: Did you hear what I said?

5 MR. SIMRY: No, your Honor.

6 THE COURT: I said reserve decision.

7 MR. SIMRY: Thank you, your Honor.

8 THE COURT: Okay.

9 MR. SUGARMAN: Your Honor, I just want to be  
10 comfortable when I walk out of here --

11 THE COURT: I don't care whether you are  
12 comfortable when you walk out or not, counsel.

13 It's not my job to make lawyers comfortable. I  
14 would be here all day.

15 MR. SUGARMAN: I misspoke.

16 We will withdraw and include only  
17 Westhampton Beach for the Eruv.

18 THE COURT: I told you how many times?

19 MR. SUGARMAN: Verizon and LIPA are still in a  
20 position that they aren't -- could I suggest the  
21 following.

22 Mr. Sokoloff says that they never threatened,  
23 they aren't going to threaten, they don't have a  
24 procedure, can we ask for a stipulation that in the  
25 interim, while the Eruv goes up, that Westhampton Beach

1 will not fine or do anything with respect to Verizon?

2 THE COURT: He's not going to stipulate to that,  
3 because he doesn't know.

4 Am I right?

5 MR. SOKOLOFF: Yes.

6 THE COURT: Look at that, I'm right once.

7 MR. SUGARMAN: The only way, as I hear Verizon  
8 and LIPA, that we can do this Eruv in Westhampton Beach --

9 THE COURT: Counsel, I told you what to do.  
10 If you don't want to do it, don't do it.

11 MR. SUGARMAN: I do want to do it, but I'm  
12 hearing from Verizon and LIPA --

13 THE COURT: Life has perils. You have to take  
14 risks.

15 You don't want to take them, don't.

16 MR. SUGARMAN: I can't take risks for Verizon  
17 and LIPA. They are not my client.

18 I want to --

19 THE COURT: Enough.

20 I made my point clear. I'm not making it easier  
21 for you than anybody else.

22 MR. SUGARMAN: I'm not asking you to make it  
23 easier.

24 All I'm asking you to do is allow us to be in  
25 Westhampton Beach which has no laws and no procedures and

1 give Verizon and LIPA the comfort that if they allow us to  
2 put lechis on the poles, they won't be fined.

3 And that's a very limited request, temporarily,  
4 if in the final analysis the Eruv has to come down, fine.  
5 Then it will come down. But, in the interim, we are not  
6 going to be able to put up the Eruv which you said we can  
7 do and we would like to do in Westhampton Beach without  
8 giving Verizon and LIPA some comfort they are not going to  
9 be fined by Westhampton Beach and they said they never  
10 threatened that.

11 From what I hear from Ms. Pincus, and I can  
12 understand their nervousness, they are not going to go  
13 forward with the contract --

14 THE COURT: Counselor, it's enough. Stop. Sit  
15 down.

16 MS. LICCIONE: Your Honor, my name is Maureen  
17 Liccione from Jaspan Schlesinger, and I represent all of  
18 the Southampton defendants.

19 Just very briefly I would like to reserve my  
20 client's rights to also file a motion to dismiss and a  
21 briefing schedule that's been suggested.

22 MR. SUGARMAN: Your Honor, this is a totally  
23 different request.

24 There has been no letter submitted that asks for  
25 permission. There's no grounds, at least under your

1 procedure, Southampton should not just say we want the  
2 same briefing schedule.

3 THE COURT: You want them to write a letter and  
4 then waste more time. I'm trying to move this ahead.

5 Granted, under the same terms as the others.

6 MS. LICCIONE: Thank you, your Honor.

7 I will consult with my clients and determine  
8 whether they will make such a motion.

9 THE COURT: Okay.

10 Let's take a break.

11 (The matter concluded.)  
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